

REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejection present in the outstanding Office Action in light of the foregoing amendments and the following remarks.

At the time of the outstanding Office Action, Claims 21-40 were pending. Of these claims, 21, 34 and 37 are independent claims; the remaining claims being dependent therefrom.

It should be noted Applicants are not conceding in this application the claims amended or cancelled herein are not patentable for the reasons cited by the Examiner in the outstanding Office Action, as the present claim amendments or cancellations are only for facilitating expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. Applicants specifically state no amendment to or cancellation of any claim herein should be construed as a disclaimer of any interest in or right to an equivalent of any element or feature of the amended claim.

Rejections under 35 USC § 102

Claims 21-24 stand rejected under 35 USC § 102 as being anticipated by Dahm et al. (U.S. Patent No. 6,301,471, hereinafter “Dahm”). Applicants respectfully disagree and request reconsideration and withdrawal of these rejections. It is noted that claims 25-33 and 35-39 are not specifically rejected yet are addressed somewhat with respect to

Dham. Applicants are unaware if this is intended to mean that these claims are rejected as anticipated by Dham. Applicants respectfully request clarification as to this point. Claims 37-39 stand rejected under 35 U.S.C. § 102 as being anticipated by Herz et al. (U.S. Patent Pub. No. 2001/0014868, hereinafter “Herz”). Applicants respectfully disagree and request reconsideration and withdrawal of these rejections.

As the Examiner is no doubt aware, “...unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to provide prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. § 102.” *Net MoneyIN Inc. v. VeriSign Inc.*, 545 F.3d 1359 (Fed. Cir. 2008). Applicants respectfully submit that neither Dham nor Herz anticipates the claimed invention.

Applicants again respectfully submit that Dham does not teach or suggest “...offering *a dynamically optimized promotion* to a customer; or (b) offering favored treatment *to a current customer at the web marketing site.*” Claim 21 (emphasis added). Applicants respectfully submit that Dham at least fails to teach either of these claimed limitations.

Regarding Herz, Applicants again respectfully submit that the Herz at least fails to teach or suggest “...determining *a dynamically optimized promotion*, wherein the dynamically optimized promotion is determined by sampling via a sampling engine...”. Claim 37 (emphasis added).

Nonetheless, Applicants have amended the claims herein solely in an effort to facilitate expeditious prosecution of this application. Claim 21 now recites, *inter alia*,

predicting that a buyer/seller relationship is degrading; wherein the predicting that a buyer/seller relationship is degrading comprises determining if a customer is likely to leave the web marketing site before being served; and taking measures to prevent degradation of the relationship; wherein taking measures to prevent degradation of the relationship comprises offering a promotion *dynamically optimized utilizing continuous real-time modeling* to a customer.

Claim 21 (emphasis added). The remaining independent claims have been similarly amended. Support for these amendments can be found throughout the specification. See Specification at [0028]; [0078]. In addition to the above-noted deficiencies of Dahm and Herz, nowhere do these references teach or suggest "...utilizing continuous real-time modeling..." Claims 21 and 37. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 102.

Rejections under 35 U.S.C. § 103(a)

Claim 40 stands rejected under 35 USC § 103(a) as obvious over Herz. Applicants respectfully disagree and request reconsideration and withdrawal of this rejection.

The Examiner is kindly reminded that "[w]hen determining whether a claim is obvious, an examiner must make a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art. Thus, obviousness requires a suggestion of all limitations in a claim. Moreover, as the Supreme Court recently stated, *there must be some articulated reasoning* with some rational underpinning to support the legal conclusion of obviousness." *Ex parte H. Garrett Wada*

et al., pp. 7, Appeal No. 2007-3733 (BPAI January 14, 2008) (internal quotation marks and citations omitted) (emphasis in original) (reversing Examiner's obviousness rejection).

Applicants respectfully submit that Herz does not teach or suggest, either alone or modified, all the claimed limitations of claim 40. Specifically, the Applicants respectfully submit that the Examiner has failed to provide any reasoning why the specific values claimed, and not disclosed in Herz, would have been obvious. Therefore, Applicants respectfully submit that Herz does not render the instantly claimed invention obvious under 35 U.S.C. § 103(a). Applicants therefore respectfully request reconsideration and withdrawal of this rejection.

Request for Interview

Applicants are submitting an Interview request form herewith.

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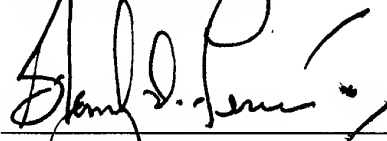
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Conclusion

In summary, it is respectfully submitted that the instant application is presently in condition for allowance. Notice to the effect is hereby earnestly solicited. Applicants' undersigned attorney would welcome further discussion with the Office in the event there are any further issues in this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stanley D. Ference III", written over a horizontal line.

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